

Dear Mr Milby,

10/4/07

Thank you for the 3 mailings I recd today of the court rulings.

Enclosed is a letter to my attorneys I need you to please place into my file.

Thank you very much,

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

OCT 10 2007



Robert A. Fratta

MICHAEL N. MILBY, CLERK OF COURT Fratta v. Quarterman, No. 4:05-cv-03392

OFFICIAL REQUEST OF APPOINTED COUNSEL TO FILE FOR REHEARING ON GROUND #13

Dear Mr Hilder & Mr Rytting,

10/4/07

I received a copy of Judge Harmon's Order from you and the Clerk this morning which states "any future pleading not filed by counsel may be stricken from the record." Being that I've requested you to assist me in getting an investigation and relief of the serious 8th Amendment violations I'm being subjected to every day here, I was going to file a pro se motion for rehearing so as not to impose it on you. But in compliance with the Order, and your request for me not to file any more motions on my own, I MUST now ask you to do so for me.

As you are well aware, I have been adamant about the filing of Ground 13 since 1998. It is not my fault that for some very odd reason all my attorneys refused to file it for me in the state courts. Now, in the light of knowing the state will appeal the relief I received, it would be extremely unwise, given the uncertainty of the decisions to be made by the higher courts, to not request a rehearing and elaborated ruling on Ground 13. At the very least, a COA should be granted for this Ground. Following are reasons I want you to take into consideration and cite in filing a timely motion for rehearing:

- 1) The only comment made on Ground 13 is that it "only involve[s] the application of state law." That is incorrect as you duly noted it affects jurisdiction, which is federal.
- 2) It is a Due Process violation. I had no judge presiding over my trial. Therefore the entire trial was unconstitutional and not fair. The resulting conviction was unconstitutional and unlawful. A judge MUST preside over my trial. Burdette was not a judge.
- 3) State law mandates my trial and conviction MUST be rendered NULL AND VOID. I did EVERYTHING I possibly could via my attorneys, the state courts, the Clerk's Office, and my friends; all in a timely manner during the state habeas proceedings (as duly noted by the state in its amended answer). I MUST now be granted federal review per 2254(b)(1)(B)(i) and (ii) which state I have grounds when: "there is an ABSENCE OF AVAILABLE STATE CORRECTIVE PROCESS" or "circumstances exist that render such process INEFFECTIVE TO PROTECT THE RIGHTS OF THE APPLICANT."
- 4) I have grounds for review under 2261(e) which states: "The ineffectiveness or incompetence of counsel during state or federal post conviction proceedings in a capital case shall not be a ground for relief...This limitation shall not preclude the appointment of different counsel, on THE COURT'S OWN MOTION or at the request of the prisoner, AT ANY PHASE of state or federal post conviction proceedings on the BASIS OF THE INEFFECTIVENESS or incompetence OF COUNSEL IN SUCH PROCEEDINGS." I duly notified the state courts of the ineffectiveness of my counsel via motions and letters, and even requested additional and/or new counsel who would make the filings for me.(see court records). The state courts IGNORED my requests IN VIOLATION OF 2261(e). Section 2261(e) PROVES

that state and federal courts canNOT ignore ALL pro se filings; and, are even to act on their own accord in instances of ineffective or incompetent counsel. It does not get any more "ineffective" than having attorneys flat out refuse to file on what was AN AUTOMATIC NULL AND VOID OF MY CONVICTION, involving my being UNLAWFULLY IMPRISONED. Surely some court somewhere MUST take notice of this INCREDIBLE INJUSTICE, and ACT ON IT and GRANT ME RELIEF on it. IT WOULD BE A TRAVESTY OF JUSTICE TO ALLOW THIS UNBELIEVABLE VIOLATION TO BE SWEPT UNDER A RUG! Judge Harmon needs to recognize that fact, and fully address this Ground with a detailed ruling on it.

Please file right away for a rehearing on this Ground 13. If granted, please speak with me before submitting your brief. I want to also point out how 2264(a)(3) applies in countering something the state said in its answer, plus I want to point out some cases I cited in that pro se motion which counter the state.(Also re-read my 2/12/06 letter I wrote you).

Judge Harmon's 9/28/07 Order correctly and thankfully noted my writ "raises several other claims REQUIRING SERIOUS CONSIDERATION". That statement in itself seems to contradict the denying of a COA. Wouldn't you agree? And Ground 13 is definitely 1 of those claims "requiring serious consideration"...NOW!

I'm very grateful, and commend Judge Harmon on upholding the laws and granting me relief on Grounds 1 and 2. I now hope and pray she will see it fit to do the same in a rehearing on Ground 13. May God guide her to do so.

Lastly I ask that you please contact her clerk about the error he/she made under the "Conclusion" in #1 where it's written "involving HIS confession" (meaning mine). As the court knows, I NEVER signed any kind of "confession". That needs to be corrected to reflect the "confessions" of Prystash and Guidry, however he/she wishes to word it to reflect that. As it now stands, people will read that and think I signed a confession, whereas I did not. I've professed my innocence all along, including thru being beaten by the detectives.

Thank you very much. Please honor my request herein and contact me very soon about it and the other matters I've recently written you about.

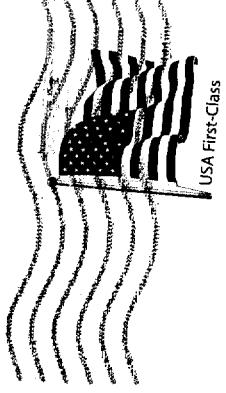
Sincerely,



Robert A. Fratta

R.A. Fratta
Polaris Unit #999189
3872 FM 350 S.
Cypress, Tx. 77351

P. Houston TX 773
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LEGAL
United States Courts
Southern District of Texas
FILED
OCT 10 2007
Michael N. Milby, Clerk
Michael N. Milby
Clerk of Court
P.O. Box 61010
Houston, Tx.
77208

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